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JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

No. 469.

ARCHIE J. LAYTON, ISAAC A. BYRD, JAMES W. BROWN and JOSEPH R. AINLEY, in Behalf of Themselves and a Committee for and in Behalf of All Other Persons of a Class Similarly Situated,
Petitioners,

vs.

SELB MANUFACTURING COMPANY, a Division of Western, Inc., a Corporation, and BLADES MANUFACTURING CORPORATION, a Corporation, and INTERNATIONAL ASSOCIATION OF MACHINISTS DISTRICT NO. 9, a Labor Organization, Appellees,
Respondents.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

JEROME J. DUFF,
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St. Louis, Missouri 63101,
314—MAin 1-3833,
Attorney for Petitioners.

ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

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The petitioners herein (the Chief Shop Steward and a majority of the Shop Stewards of an employee unit of the respondent Company) pray this Court to grant a rehearing of its order of November 7th, 1966, denying these petitioners a writ of certiorari, 87 S. Ct. ... (1966), and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Eighth Circuit as prayed in the petition for certiorari filed herein on August 23rd, 1966.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT.

1. Chief Judge Vogel and Judges Blackmun and Stephenson (District Judge), in an opinion by District Judge Stephenson found the appeal herein to be frivolous and assessed damages against these petitioners which will approximate $2,000.00 (Appendix "A" to Petition for Writ of Certiorari, opinion of Eighth Circuit Court of Appeals, pages 5, 6 and 7).

2. An order and money judgment of this nature, without notice, without a hearing, without any indication that the district judge below found the original Rule 60 (b) (6) motion to be devoid of merit; and, finally without any clue or comment hinting at such an attitude from the Court of Appeals in the course of the argument of counsel during the submission of the appeal to the three Judges assigned to hear this appeal is a flagrant denial of the right of due process guaranteed by the Fifth Amendment to the Constitution of the United States.

3. The petition of these Union Shop Stewards under the provisions of Rule 60 (b) (6) (R. 6 to 9) prayed that the "Stipulation" of dismissal (R. 10) be set aside because this dismissal was violative of the mandate of the Eighth Circuit Court of Appeals (Prayer of petition, R. 8 and 9). Petitioners urge this Court to consider that this abortive "Stipulation" (R. 10), set aside the "judgment and decree entered by" the District Court "on December 27, 1961." The stipulation never mentions or even alludes to the fact that the Court of Appeals had entered its Mandate in that same file on August 30th, 1962, (Docket entries, U. S. District Court, R. 3). This Mandate and its affirming provisions, orders and judgments were never "set aside" and remain as binding and enforceable today as it was on August 30th, 1962. These petitioners need the authority of this Court "upon such terms as are

just" (Rule 60 (b) (6)) to allow them to enjoy the benefits of their arbitration award.

4. Rule 60 (b) (6) allows a District Court "to set aside a judgment for fraud upon the court." Underneath the mountain of abuse which has been shovelled onto these petitioners one fact remains crystal clear and uncontroverted: these union members were never advised in any respect of the terms and provisions of the "agreement" (J. S. R. 35, 36, 37, 38 and 39) entered into and executed by the respondent Union official and Company official on the same day that they executed and filed the abortive "Stipulation." This agreement was **never** filed with either the District Court or the Court of Appeals nor was it ever made known to these petitioners until **after** they filed their Rule 60 (b) (6) motion (R. 67, 70, 72). This "Agreement" re-wrote the Arbitrator's Award without his knowledge or consent; re-wrote the orders and judgment of the District Court Judge without his knowledge or consent; re-wrote the Mandate of the Court of Appeals without its knowledge or consent and finally it re-wrote the rights and benefits awarded to these petitioners without their knowledge or consent. **This is fraud!!!** Fraud upon an Arbitrator, two Courts and upon the rights of the employee-union members in whose behalf this entire proceeding was instituted. It is fraud by a labor union official in breach of his fiduciary duty to his captive members.

In the course of adjudicating this Rule 60 (b) (6) motion thus far this unassailable fact of fraud has never been mentioned. In retrospect it becomes the single most important factor in this entire case. Petitioners pray now that this Court re-consider its order refusing to issue its Writ of Certiorari, and correct the repeated denial of justice which has been the lot of these petitioners thus far.

CONCLUSION.

For the reasons set forth herein and in the petition for writ of certiorari it is respectfully urged that rehearing be granted and that, upon such re-hearing, a writ of certiorari issue to the Court of Appeals for the Eighth Circuit.

Respectfully submitted,

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JEROME J. DUFF,
Counsel for Petitioners.

Certificate of Counsel.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

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Jerome J. Duff,
Counsel for Petitioners.

Certificate of Service.

State of Missouri,
City of St. Louis. } ss.

I, Jerome J. Duff, of counsel for the Petitioners herein and attorney of record for the Petitioners in the Court below, depose that on the 30 day of November, 1966, I served four copies of the foregoing Petition for Rehearing on the Respondents as required by Rule 33, Paragraph 1, by personally mailing said copies hereof to Mr. Bernard Barken, Attorney of Record for Respondent Company,

611 Olive Street, St. Louis, Missouri 63101, and Messrs. Bartley, Siegel and Bartley, Attorneys for Respondent Union, 130 South Bemiston Avenue, Clayton, Missouri 63105.

.....

Jerome J. Duff.

Subscribed and sworn to before me at St. Louis, Missouri, on this .... day of November, 1960.

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Notary Public.

My Commission Expires:

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